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**STATE OF WISCONSIN  
Division of Hearings and Appeals**

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In the Matter of

[REDACTED]  
[REDACTED]  
[REDACTED]

DECISION

MAP/158747

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**PRELIMINARY RECITALS**

Pursuant to a petition filed June 02, 2014, under Wis. Stat. § 49.45(5), and Wis. Admin. Code § HA 3.03, to review a decision by the Disability Determination Bureau in regard to Medical Assistance (MA), a telephonic hearing was held on August 12, 2014.

The issue for determination is whether the Disability Determination Bureau (DDB) correctly determined that the petitioner is not disabled for MAP purposes.

There appeared at that time and place the following persons:

**PARTIES IN INTEREST:**

Petitioner:

[REDACTED]  
[REDACTED]  
[REDACTED]

Respondent:

Department of Health Services  
1 West Wilson Street, Room 651  
Madison, Wisconsin 53703

By: No Appearance

Disability Determination Bureau  
722 Williamson St.  
Madison, WI 53703

**ADMINISTRATIVE LAW JUDGE:**

Kelly Cochrane  
Division of Hearings and Appeals

**FINDINGS OF FACT**

1. Petitioner is a resident of Kenosha County. He has not been adjudicated to be blind or disabled by any federal or state agency.
2. The petitioner is 61 years old, has a high school degree and attended college for about 1 year, has had some vocational/trades training, and has a cosmetology degree as of 2011. He has been

primarily employed as a mechanic as an adult, but also has experience with customer service work. He is currently working for [REDACTED] as a salesperson approximately 4-5 days/week at 4 hours/day.

3. The petitioner has alleged multiple health conditions including: kidney disease, lower back and hip pain, arthritis, high blood pressure, Hepatitis C, hypertension, anxiety, degenerative disc disease, prostate trouble, and liver problems.
4. Petitioner applied for the Medicaid Purchase Plan (MAP) on March 12, 2014. By letter dated May 14, 2014, the Disability Determination Bureau found that petitioner was not disabled. Petitioner sought reconsideration, but the Bureau affirmed its determination on June 30, 2014.
5. Prior to or concurrently with the MAP application, petitioner also applied for Social Security Disability Insurance Benefits (DIB/SSDI/Title 2) and Supplemental Security Income (SSI/Title 16) with the federal Social Security Administration. Those benefits were denied on or about June 25, 2014 on reconsideration. The petitioner does not allege any new medical impairment, nor any worsening of the impairments considered in the Social Security decision that the federal agency has refused to consider. Rather, he has filed an appeal and is awaiting a federal agency hearing.

### **DISCUSSION**


Medicaid is a state/federal program that provides health coverage for Wisconsin residents that are elderly, blind, or disabled (EBD) or receive Wisconsin Well Woman Medicaid. Medicaid is also known as Medical Assistance, MA, and Title 19. Individuals who are not elderly, blind or disabled (EBD) may be eligible for BadgerCare+ (BC+). The issue in this case relates to petitioner's application for disability.

At present, a finding of disability must be in accordance with federal SSI and/or DIB standards. See, Wis. Stat. §49.47(4)(a)4. Because the standards are the same, a finding of no disability for federal SSI and/or DIB purposes made within 12 months of the MA application is binding on a State MA agency. Exceptions may occur only if certain conditions exist such as allegations of a different disabling condition or changes in the previously considered conditions. In order to be eligible for the sub-program known as the Medical Assistance Purchase Plan (MAP), the applicant must be disabled under the same definition. Wis. Stat. §49.472(3)(c). The MAP program allows disabled individuals to work but to retain eligibility for MA. Wis. Stat., §49.472; Medicaid Eligibility Handbook, §26.4.2, available online at <http://www.emhandbooks.wisconsin.gov/meh-ebd/meh.htm>. None of the exceptions apply here. See, 42 C.F.R. §435.541(a); see also, U.S. Department of Health and Human Services, *Commentary*, 54 Fed. Reg. 236 (1989). Because petitioner has been denied SSI and DIB benefits following an essentially concurrent finding of "no disability", I must conclude that petitioner is not disabled for MAP purposes either. This is not meant to diminish the challenges he faces. However, at this juncture, with an appeal pending before the federal agency, the Social Security Administration has not refused to consider any evidence he may desire to present about new, or worsened, conditions. The Department is bound by that federal determination for at least 12 months after the most recent decision of record. If he succeeds in the federal appeal and is found disabled by the Social Security Administration, he would then be considered disabled for MA and/or MAP purposes as well. In that event, he should then contact the county agency or the Disability Determination Bureau and report the favorable disability finding; and then be tested for financial eligibility for MA-Disability or MAP.

I add, assuming petitioner finds this decision unfair, that it is the long-standing position of the Division of Hearings & Appeals that the Division's hearing examiners lack the authority to render a decision on equitable arguments. See, Wisconsin Socialist Workers 1976 Campaign Committee v. McCann, 433 F.Supp. 540, 545 (E.D. Wis.1977). This office must limit its review to the law as set forth in statutes, federal regulations, and administrative code provisions.

I also add that petitioner can apply for BC+. The BC+ Handbook §1.1.4, available online at <http://www.emhandbooks.wisconsin.gov/bcplus/bcplus.htm>, indicates that applications for BC+ may be made as follows:

The following *application* options are available for anyone who is applying for BC+:

1. ACCESS online application at <https://access.wisconsin.gov/>.
2. Face-to-Face Interview at the local county/tribal office.
3. Paper application
4. Telephone Interview.
5. An application submitted to the *Federally Facilitated Marketplace* ()

### **CONCLUSIONS OF LAW**

Petitioner is not disabled as that term is used for MA and/or MAP purposes pursuant to Wis. Stat. §49.47(4).

**THEREFORE, it is**

**ORDERED**

That the petition for review herein be and the same is hereby dismissed.

### **REQUEST FOR A REHEARING**

This is a final administrative decision. If you think this decision is based on a serious mistake in the facts or the law, you may request a rehearing. You may also ask for a rehearing if you have found new evidence which would change the decision. Your request must explain what mistake the Administrative Law Judge made and why it is important or you must describe your new evidence and tell why you did not have it at your first hearing. If you do not explain these things, your request will have to be denied.

To ask for a rehearing, send a written request to the Division of Hearings and Appeals, P.O. Box 7875, Madison, WI 53707-7875. Send a copy of your request to the other people named in this decision as "PARTIES IN INTEREST." Your request for a rehearing must be received no later than 20 days after the date of the decision. Late requests cannot be granted.

The process for asking for a rehearing is in Wis. Stat. § 227.49. A copy of the statutes can be found at your local library or courthouse.

### **APPEAL TO COURT**

You may also appeal this decision to Circuit Court in the county where you live. Appeals must be served and filed with the appropriate court no more than 30 days after the date of this hearing decision (or 30 days after a denial of rehearing, if you ask for one).

For purposes of appeal to circuit court, the Respondent in this matter is the Department of Health Services. After filing the appeal with the appropriate court, it must be served on the Secretary of that Department, either personally or by certified mail. The address of the Department is: 1 West Wilson Street, Room 651, Madison, Wisconsin 53703. A copy should also be sent to the Division of Hearings and Appeals, 5005 University Avenue, Suite 201, Madison, WI 53705-5400.

The appeal must also be served on the other "PARTIES IN INTEREST" named in this decision. The process for appeals to the Circuit Court is in Wis. Stat. §§ 227.52 and 227.53.

Given under my hand at the City of Milwaukee,  
Wisconsin, this 21st day of August, 2014

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\sKelly Cochrane  
Administrative Law Judge  
Division of Hearings and Appeals



**State of Wisconsin\DIVISION OF HEARINGS AND APPEALS**

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The preceding decision was sent to the following parties on August 21, 2014.

Kenosha County Human Service Department  
Division of Health Care Access and Accountability